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## State of Utah

### DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

#### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

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August 16, 2011

**CERTIFIED MAIL NO. 7004-2890-0000-6087-6205**

Kirk Nicholes, Resident Agent  
Alton Coal Development, LLC  
463 North 100 West, Suite 1  
Cedar City, Utah 84720

Subject: Findings of Fact, Conclusions of Law, and Order for NOV 10078, 10079, and 10084, Alton Coal Development, Coal Hollow Mine C/025/0005

Dear Mr. Nicholes:

On June 16, 2011 an Informal Assessment Conference was held to review the fact of violation and assessment for Notice of Violation ("NOV") 10078, NOV 10079, and NOV 10084. As a result of a review of all pertinent data and facts, including those presented in the Informal Assessment Conference, the attached document constitutes the Findings of Fact, Conclusions of Law, and Order.

Within fifteen (15) days of your receipt of this ORDER, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this ORDER, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right to further recourse. Your written appeal may be filed with Julie Ann Carter, Board Secretary, P.O. Box 145801 Salt Lake City, UT 84114-5801. If you have questions regarding the filing, she can be contacted at [juliecarter@utah.gov](mailto:juliecarter@utah.gov) or (801) 538-5277.

If no timely appeal is made, the total assessed civil penalty of \$1,980 must be tendered within thirty (30) days of your receipt of this ORDER. Please remit payment to the Division of Oil, Gas and Mining, c/o Vickie Southwick at the address listed below.

If you have questions or concerns please contact me at (801) 538-5334.

Sincerely,

John Baza, Director  
Division of Oil, Gas and Mining  
Informal Conference Officer



**BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

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<b>IN THE MATTER OF THE INFORMAL</b>	<b>:</b>	
<b>ASSESSMENT CONFERENCE for</b>	<b>:</b>	<b>FINDINGS OF FACT,</b>
<b>the FACT OF THE VIOLATION</b>	<b>:</b>	<b>CONCLUSIONS OF LAW</b>
<b>and PROPOSED ASSESSMENT</b>	<b>:</b>	<b>AND ORDER</b>
<b>FOR VIOLATION</b>	<b>:</b>	
<b>No. 10078, No. 10079, and No. 10084,</b>	<b>:</b>	<b>CAUSE NO. C/025/0005</b>
<b>ALTON COAL DEVELOPMENT, LLC.</b>	<b>:</b>	

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On May 17, 2011 Alton Coal Development, LLC ("Alton") timely requested an informal conference before the Division of Oil, Gas and Mining ("Division or DOGM") to review the fact of the violation and assessment for:

- 1) Notice of Violation ("NOV") No. 10078 issued on March 9, 2011 for failure to designed, construct, and maintain appropriate sediment control measures and assessed a penalty of \$1,980;
- 2) NOV 10079 issued on March 9, 2011 for failure to protect topsoil and assessed a penalty of \$396; and
- 3) NOV 10084 issued on May 2, 2011 for discharging from a non-UDPES permitted outfall and assessed a penalty of \$2,750.

On June 16, 2011 the Division held an Informal Assessment Conference pursuant to Utah Administrative Code R645-401-700 to review the NOV's.

On July 7, 2011 the parties stipulated to a thirty (30) day continuance of the Findings of Fact, Conclusions of Law, and Order.

**PROCEDURAL HISTORY**

**NOV 10078: Failure to Maintain Sediment Control**

Utah Code Ann. § 40-10-17(2)(j)(ii)(B) requires operators to "minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface

coal mining operations and during reclamation by . . . constructing any siltation structures . . . prior to the commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan."

Utah Admin. Code R645-301-742.110, .111, and .121 require operators to use appropriate sediment control measures designed, constructed, and maintained using the best technology currently available to prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area and to retain sediment within disturbed area.

On March 2, 2011 Division staff Joe Helfrich inspected the Coal Hollow Mine and determined the operator had: 1) failed to design, construct and maintain appropriate sediment control measures; 2) failed to prevent the contribution of additional suspended solids and sediment to stream flow or runoff outside the permit area; and 3) failed to retain sediment within the disturbed area.

On March 9, 2011 the Division issued NOV 10078. The NOV required Alton to: 1) remove snow and sediment piled along the southern portion of Robinson Creek by 5 p.m. Monday March 14, 2011; 2) cease the deposition of untreated runoff into the natural Robinson Creek drainage from the ponded and associated disturbed areas below the confluence of the temporary Robinson Creek diversion and the natural Robinson Creek drainage and provide adequate temporary sediment control by 5:00 p.m. March 10, 2011; and 3) install at least three straw bales keyed in properly across the natural Robinson Creek drainage just above the lower confluence with the temporary Robinson Creek diversion by 5:00 p.m. Thursday, March 10<sup>th</sup>.

On April 7, 2011 the abatement deadline was extended to April 22, 2011.

On April 12, 2011, Assessment Officer Daron Haddock assessed a total of 38 points, 20 points for an event violation, 10 points for damage, and 8 points for negligence, for the violation resulting a monetary penalty under R645-401-300 of \$1,980.

#### **NOV 10079: Failure to Protect Topsoil**

Utah Code Ann. § 40-10-17(2)(e) requires an operator to "remove topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil, and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains, free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation; . . ."

Utah Admin Code R645-301-234.230 requires topsoil storage "[b]e protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the Division . . ."

On March 2, 2011 Division staff Joe Helfrich inspected the Coal Hollow Mine and found that the current operations were failing to protect the topsoil.

On March 9, 2011 the Division issued NOV 10079. The NOV required Alton to: 1) remove the top soil from both sides of Robinson Creek that was currently undisturbed; 2) place the temporarily stockpiled topsoil in the approved location; and 3) provide a protective berm and a silt fence or straw bales around each stockpile by March 14, 2011.

Due to the saturation of the topsoil on April 7, 2011 the abatement deadline was extended to April 22, 2011. On April 21, 2011 the abatement deadline was again extended to May 4, 2011 to allow the operator to rent smaller equipment necessary for transporting the remaining saturated top soil.

On April 12, 2011 Assessment Officer Daron Haddock assessed a total of 18 points, 10 points for an event violation and 8 points for negligence, for the violation and a monetary penalty under R645-401-300 of \$396.

#### **NOV 10084: Discharge from a Non-UPDES Permitted Location**

Utah Admin Code R645-301-751 provides "discharges of water from areas disturbed by coal mining and reclamation operations will be made in compliance with all Utah and Federal water quality laws and regulations . . ."

UPDES Permit #UTG040027, page 4, states discharges from any outfall location other than those specifically designated in the UPDES permit are not authorized and a violation of the Utah Water Quality Act and may be subject to penalties under the Act.

On April 20, 2011 Division staff Kevin Lundmark inspected the Coal Hollow Mine and found water discharging from a 4-inch PVC pipe draining from an ad-hoc impoundment in the former Lower Robinson Creek Channel.

On that date, the Division issued NOV 10084. The NOV required the operator to "terminate all discharge activity from the non-UPDES permitted outfall and report this non-compliance incident to the Division of Water Quality."

On June 2, 2011 Assessment Officer Joe Helfrich assessed a total of 45 points, 20 points for an event violation and 25 points for negligence, for the violation and assessed a monetary penalty under R645-401-300 of \$2,750.

## **PARTIES**

On June 16, 2011 an informal conference was conducted as in an informal adjudicative proceeding pursuant to Utah Admin. Code R645-401-700.

John Baza, Director of the Division of Oil, Gas and Mining served as the Hearing Officer. Mr. Baza was represented by Emily E. Lewis, Assistant Attorney General.

Dana Dean, Associate Director of the Division of Oil, Gas and Mining facilitated the Division's presentation of arguments and witnesses. Ms. Dean and the Division were represented by Steven F. Alder, Assistant Attorney General.

Joe Helfrich, Division staff, presented arguments in support of the issuance of NOV 10078 and NOV 10079.

Daron Haddock, Assessment Officer for NOV 10078 and NOV 10079 presented arguments in support of assessment amounts for these NOVs.

April Abate, Division staff, on-behalf of Kevin Lundmark who issued the NOV, presented arguments in support of the issuance of NOV 10084.

Joe Helfrich, Assessment Officer for NOV 10084, presented arguments in support of the assessment amount for NOV 10084.

Larry Johnson, as representative of the Operator, and Kirk Nicholes, environmental consultant for the Operator, were present as representatives of Alton Coal Development. Mr. Johnson and Mr. Nicholes were represented by counsel, Denise Dragoo of Snell and Wilmer.

An audio recording of the conference was made.

## **FINDINGS OF FACT**

Based on the information provided at the conference, the statements presented by those speaking, and on information in the files of the Division, the following Findings of Fact and Conclusions of Law were made.

### **NOV 10078**

1. As of the date of the violation, Alton's topsoil protection measures along the natural Robinson Creek drainage were inadequate.

2. These inadequate measures resulted in an event violation that caused sediment to enter Robinson Creek which damaged the hydrologic balance of the area.
3. Alton's negligence is partially responsible for the violation since reasonable care or proper diligence in maintaining sediment measures would have prevented the violation.
4. The operator was unable to abate the violation within the requested time period but prudently sought and received from the Division an extension on the abatement deadline. Consequently, the operator made some good faith efforts to address the problem within a normal compliance period.

#### **NOV 10079**

5. The decision to require Alton to remove all topsoil from the Robinson Creek area and to transport it to storage areas was a professional judgment made by Division staff. The Division has full faith in the professional expertise of its staff but recognizes professional judgments may differ.
6. It was unnecessary to remove the topsoil from the Robinson Creek area at the time of the NOV.
7. The winter of 2010-2011 was an unusually wet winter with heavy precipitation that saturated the soil within the permit boundary. The operator hired additional small equipment to complete the task of removing the saturated soil. Considering these extenuating circumstances, the operator made some good faith efforts to address the problem within a normal compliance period.

#### **NOV 10084**

8. As of the date of the violation, water was being discharged from a 4-inch PVC pipe from an impoundment in the former natural Lower Robinson Creek channel.
9. Aside from informing the Division about the receipt of the RCRA 8 water analysis, Alton did not consult with the Division prior to discharging the water.
10. The discharge was not a permitted outfall under the Coal Hollow UPDES Permit # UTG040027.
11. The violation is related to NOV 10079 requiring the removal of topsoil along Robinson Creek. However, a prudent operator would have foreseen the potential impacts of removing the topsoil and created the appropriate drainage system accordingly.

12. Better communication between the Division and Alton regarding the discharge of water could have prevented the violation.

### **CONCLUSIONS OF LAW**

#### **NOV 10078:**

1. The event violation valued at 20 points will stand.
2. The damage valued at 10 points will stand.
3. The negligence of Alton in creating the violation valued at 8 points will stand.
4. Alton will receive 5 good faith points for remedying the violation within a normal compliance period.

#### **NOV 10079**

5. It was unnecessary to require the topsoil along Robinson Creek be removed and NOV 10079 is vacated.

#### **NOV 10084**

6. The event violation valued at 20 points will stand.
7. The damage valued at 0 points will stand.
8. Due to the related nature of NOV 10079 and NOV 10084, the negligence of Alton in creating the violation will be reduced by 10 points, resulting in a value of 15 points.
9. Alton will receive 10 good faith points for remedying the violation within a normal compliance period.

### **ORDER**

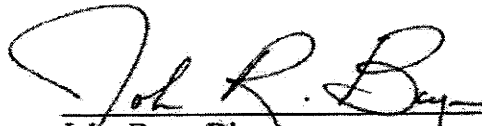
1. The fact of the violation underlying NOV 10078 is upheld. The total points assessed for NOV 10078 is 33 points and assessed a monetary value of \$1430 which must be paid within thirty (30) days of receipt of this ORDER. R645-401-300.
2. NOV 10079 is vacated.
3. Alton Coal Development is not required to pay the assessed fine of \$396 for NOV 10079.

4. The fact of the violation underlying NOV 10084 is upheld. The total points assessed for NOV 10084 is 25 points and assessed a monetary value of \$550 which must be paid within thirty (30) days of receipt of this ORDER. R645-401-300.

#### **RIGHTS OF APPEAL**

This ORDER may be appealed to the Board of Oil, Gas and Mining in accordance with the procedures set out in R645- 401-800 by filing a written petition for appeal with the Board within fifteen (15) days of receipt of the ORDER. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this ORDER, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right to further recourse.

SO DETERMINED AND ORDERED this 16<sup>th</sup> day of August 2011.

  
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John Baza, Director  
Division of Oil, Gas and Mining  
Informal Conference Officer